

United States District Court
Southern District of California

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Case No. 10-CR-4246 JM
)
BASAALY SAEED MOALIN,) Thursday, April 7, 2011
MOHAMAD MOHAMAD MOHAMUD,) Status Hearing
ISSA DOREH,)
AHMED NASIR TAALIL MOHAMUD,)
)
Defendants.)
_____)

Before the Honorable Jeffrey T. Miller
United States District Judge

Official Interpreter: Ahmedei M. Farah, CCI
Official Court Reporter: Debra M. Henson, CSR, RPR
U.S. Courthouse
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1 Appearances

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16 Linda Moreno
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25

1 San Diego, California - Thursday, April 7, 2011

2 (Defendants are being assisted by a Somali interpreter.)

3 THE CLERK: Calling matter 1 on calendar,
4 10-CR-4246, USA versus Basaaly Saeed Moalin.

5 MR. COLE: Good morning, your Honor. William Cole
6 and Caroline Han for the United States.

7 MR. GELLER: Good morning, your Honor. Marc Geller
8 appearing on behalf of Mr. Moalin. He'll be entering the
9 courtroom in custody momentarily for the record.

10 MS. FONTIER: Good morning, your Honor. Alice
11 Fontier also, hopefully, on behalf of Mr. Moalin.

12 THE COURT: Nice to see you again, Ms. Fontier.

13 MS. FONTIER: You as well, your Honor.

14 THE CLERK: Mohamad Mohamad Mohamud.

15 MS. MORENO: Good morning, your Honor. I see
16 Mr. Mohamud is in the courtroom. Linda Moreno hopefully
17 going to be his counsel. I don't -- I've never met Mr.
18 Sherif; I don't know if he's in the courtroom.

19 THE COURT: Okay. I don't see Mr. Sherif.

20 MR. GELLER: He just stepped out, your Honor. He
21 was here earlier, and he --

22 THE COURT: Very good. Welcome, Ms. Moreno.

23 MS. MORENO: Thank you, your Honor.

24 THE CLERK: Issa Doreh.

25 MR. TROIANO: Good morning, your Honor. Kenneth

1 Troiano on behalf of Issa Doreh. He's present in custody.

2 MR. GHAPPOUR: Good morning, your Honor. Ahmed
3 Ghappour hopefully on behalf of Mr. Doreh.

4 THE COURT: Good morning. Welcome.

5 THE CLERK: And Ahmed Nasir Taalil Mohamud.

6 MS. HANOVER: Good morning, your Honor. Holly
7 Hanover on behalf of Mr. Mohamud.

8 THE COURT: Good morning.

9 MS. HANOVER: He is actually present before the
10 Court.

11 MR. GELLER: Mr. Moalin is now present before the
12 Court, your Honor.

13 THE COURT: Okay. And Mr. Sherif is entering the
14 courtroom. Gentlemen, please be seated. Good morning to
15 you. Okay. We have a few matters that we need to address
16 today, and the first I think would be the substitutions of
17 counsel desiring to enter the case at this point.

18 I received papers I believe from all of you, and
19 then with respect to defendant Moalin, I've received papers
20 from Ms. Fontier. Ms. Fontier, I noticed in your notice of
21 motion and motion to substitute in as counsel designated --
22 designated Mr. Joshua Dratel as lead counsel or Dratel; is
23 that --

24 MS. FONTIER: Dratel.

25 THE COURT: Okay. And you as co-counsel. There's

1 no reference to you coming in as retained counsel, but I
2 assume that you are retained counsel.

3 MS. FONTIER: Yes, your Honor.

4 THE COURT: Okay. All right. You have no
5 objection, Mr. Geller, I would assume.

6 MR. GELLER: No, your Honor.

7 THE COURT: All right. The motion for substitution
8 of counsel would be granted and is granted at this time.
9 Mr. Dratel is designated as lead counsel, Ms. Fontier as
10 co-counsel. I assume you're both admitted to practice in the
11 district here; is that correct?

12 MS. FONTIER: That's correct, your Honor.

13 THE COURT: Okay. Very good. Very good.

14 MR. GELLER: And, your Honor, for the record, I
15 spoke with Mr. Cole right before court convened, and
16 Ms. Fontier is going to go over to his office, sign the
17 protective order. We've organized in the last ten days or so
18 all of the discovery and put it into binders, and then I'll
19 just turn it over when --

20 THE COURT: Okay. I was going to get to discovery
21 and other matters in just a moment. I'm just trying to get
22 the status with respect to counsel squared away now, but I
23 appreciate your comments, Mr. Geller. So, Mr. Geller, I will
24 relieve you at this time of any further responsibility for
25 representing Mr. Moalin. And we have next for defendant

1 Mohamud, Ms. Moreno.

2 MS. MORENO: Yes, your Honor.

3 THE COURT: And, Ms. Moreno, I've been through your
4 papers as well, your motion, and I would grant your request
5 to be substituted in as retained counsel.

6 MS. MORENO: Thank you.

7 THE COURT: And Mr. Sherif --

8 MR. SHERIF: Yes, your Honor.

9 THE COURT: -- thank you for being here this
10 morning; I do appreciate it. I'll probably have a few
11 questions of you as well as other counsel who are departing
12 the case, but, Mr. Sherif, you are relieved of any further
13 representation of Mr. Mohamud --

14 MR. SHERIF: Thank you, your Honor.

15 THE COURT: -- at this time. Then we have
16 Mr. Ghappour --

17 MR. GHAPPOUR: Yes, your Honor.

18 THE COURT: -- for Mr. Doreh. And, Mr. Ghappour,
19 I've read your papers as well, and I would grant your motion
20 to be substituted in as retained counsel in this case, and I
21 would relieve Mr. Troiano of any further responsibility of
22 representing Mr. Doreh in this case. Ms. Hanover, you are
23 continuing on as counsel --

24 MS. HANOVER: To the best of my knowledge, yes,
25 your Honor.

1 THE COURT: -- for Mr. Ahmed Mohamud, defendant
2 number 4. Okay. Now, with respect to new counsel entering
3 the case, I just want to emphasize one thing. You're all
4 coming in as retained counsel, and as the saying goes in our
5 district, which was I think first minted by Judge Enright,
6 "in for a penny, in for a pound" -- I know that other counsel
7 familiar with the practice in this district understand
8 that -- so that once -- I would never anticipate resources
9 for retained counsel being, in effect, depleted, but if that
10 be the case, I just want to make it clear for all retained
11 counsel that converting into CJA representation would not --
12 would not be in the cards. So with that understanding, of
13 course, you're all into the case at this point.

14 I want to discuss the issue of -- well, first of
15 all, coordination between departing counsel and entering
16 counsel, new counsel. I assume that departing counsel have
17 been able to provide to newly retained counsel all of their
18 files, including all of the discovery material in this case.
19 Mr. Geller, I assume -- you started to go down that path.

20 MR. GELLER: Well, inasmuch as there was a -- I
21 received a phone call from their office asking them if I
22 could provide them with the discovery. Inasmuch as there's a
23 protective order that they haven't yet signed, I was unable
24 to do that, but we have organized it. And I spoke with
25 Mr. Cole this morning, and the plan is is that after court's

1 adjourned, new counsel will go over to their office, sign the
2 protective order. I requested if they could supply me with a
3 photocopy of the protective order, I would turn over all the
4 discovery I have.

5 THE COURT: Okay. Ms. Fontier, is that your
6 understanding as well?

7 MS. FONTIER: It is, your Honor. And I haven't
8 spoken directly to Mr. Cole this morning, but I'm sure we can
9 arrange that as soon as this appearance is over.

10 THE COURT: And then Mr. Sherif --

11 MR. SHERIF: I will do the same.

12 THE COURT: Okay. You're going to do the same.
13 You have not provided materials as of yet, but you will once
14 the protective order is signed?

15 MR. SHERIF: No, I have not, your Honor.

16 THE COURT: Okay. And you'll be doing so after the
17 protective order is signed?

18 MR. SHERIF: Yes, your Honor.

19 THE COURT: Okay. Very good. And then we have Mr.
20 Ghappour and Mr. Troiano. And Mr. Troiano, what's the status
21 there with respect to discovery?

22 MR. TROIANO: I have the discovery. We have an
23 appointment to provide it today, later in the afternoon.
24 It's my understanding -- I didn't actually sign a protective
25 order -- that it was entered without objection, and that the

1 Court could easily make that applicable to all new counsel
2 right now without any further signature or photocopying.

3 THE COURT: Make what applicable?

4 MR. TROIANO: The protective order.

5 THE COURT: Well, the protective order would be --
6 would apply. Obviously the protective order binds the
7 defendants and all the defendants' representatives, including
8 all counsel; but I think it is certainly good practice to
9 have all new counsel signing off on the protective order as
10 well, especially if that's going to facilitate the movement
11 of discovery and further discovery being provided to counsel
12 in the case.

13 Okay. Let's discuss -- well, first of all, I know
14 new counsel coming in, even without the benefit of having the
15 discovery in front of them, are aware that the discovery is
16 relatively substantial, voluminous. I think during the first
17 couple of hearings we've had, counsel, there have been
18 references to something on the order of approximately a
19 thousand intercepts, conversations intercepted, with -- with
20 counsel for the government indicating that somewhere in the
21 area of 125 or so have been deemed to be material; is that
22 correct, Mr. Cole? I assume that number is still a fairly
23 viable number.

24 MR. COLE: Part of it is, your Honor.

25 THE COURT: Okay.

1 MR. COLE: We've -- the 120 some-odd calls that we
2 consider most pertinent has not changed, but we have turned
3 over more calls than the initial estimate. That was our best
4 estimate at the time.

5 THE COURT: Right.

6 MR. COLE: We've been trying to make sure we're
7 getting over everything we need to, and so I think the number
8 of calls we've turned over now is around 1800.

9 THE COURT: Eighteen hundred, okay.

10 MR. COLE: Now, we -- we need to -- we don't --
11 presently we don't anticipate turning over any other calls
12 unless we missed one -- in other words, if counsel calls and
13 says hey, there's a -- there's supposed to be a file on the
14 disk and it's not there. We will be doing some quality
15 control that way, so there might be a few calls that we
16 missed, but we -- we believe we've now turned over all the
17 calls we intend to turn over.

18 THE COURT: Okay. Very good. Well, my point being
19 that discovery is fairly substantial here, and I know
20 counsel, newly entering counsel will require some period of
21 time obviously to become familiar with the case and in a
22 sense reach the same status in terms of preparation where
23 departing counsel have arrived at this particular point in
24 time.

25 So I'm here to address any particular issues

1 relative to discovery or other administrative matters that
2 might be of concern to counsel, but if -- if there is nothing
3 further to be addressed specifically in understanding how
4 much discovery needs to be reviewed by counsel, it seems to
5 me that we'll probably need to set the next motion
6 hearing/status conference over for a period of a couple of
7 months I would think. But before I do that, I'd like to
8 enlist any comments from counsel or concerns. Yes,
9 Ms. Moreno?

10 MS. MORENO: Thank you, your Honor. In speaking
11 with Mr. Cole a few minutes ago, I think on behalf of Mr.
12 Mohamud there was a pending issue about declaring the case
13 complex. I would be at this point willing to stipulate to
14 that in order to have the record straight. I don't know if
15 that's actually correct, but I do believe that the case is
16 complex and that would affect timing issues, et cetera.

17 THE COURT: Well -- and I know Mr. Mohamud, acting
18 through Mr. Sherif, was a little concerned about stipulating
19 to the complexity of the case. It's been pretty clear to me
20 that the case does meet the criteria of 3161 (h) for a
21 declaration of complexity given the number of defendants and
22 the scope and scale of the case as well as all of the
23 discovery. I have not actually made that ruling yet; I was
24 going to address that at some point in time. I know Mr.
25 Sherif was contemplating the issue, and I wanted to give him

1 a little bit more of an opportunity to consider that. I know
2 all other counsel have in effect acknowledged that this is a
3 proper case for a declaration of complexity. We've had
4 pending motions the entire time, so obviously the Speedy
5 Trial Act has been tolled for the near entirety of the
6 pendency of this case given the pending motions, but now that
7 everyone is on board with that, I would suggest -- Mr. Cole,
8 if you'd like to take the laboring oar and prepare a written
9 stipulation setting forth the basic elements out of the
10 Speedy Trial Act, out of 3161 (h), for a declaration of
11 complexity, I think that would be appropriate at this point.
12 You could just submit that --

13 MR. COLE: Yes, your Honor.

14 THE COURT: -- with signatures all the way around,
15 I'll be happy to sign off on that. And of course that will
16 have the effect of permanently tolling the Speedy Trial clock
17 until further ordered by the Court. Thank you, Ms. Moreno,
18 for that. Any other matters that we need to address of an
19 administrative nature? Ms. Fontier, any --

20 MS. FONTIER: I have nothing further, your Honor.

21 THE COURT: Okay. Mr. Ghappour?

22 MR. GHAPPOUR: Nothing further, your Honor.

23 THE COURT: Okay. Ms. Hanover?

24 MS. HANOVER: Well, your Honor, given the fact that
25 I'm the only remaining appointed counsel in the case, I think

1 there's going to be some budgetary issues that I will
2 seriously need to adjust, and I will have to file an amended
3 petition -- request with the Court at some point, so --

4 THE COURT: That's fine. And I'm sure you'll be
5 working with Ms. Rutledge of the Circuit on that.

6 MS. HANOVER: I will be in contact with her.

7 THE COURT: Very good. Very good. Okay. Well, if
8 there's nothing further then, let us arrive at a date for our
9 next status conference here. I'm suggesting something a few
10 months out, which would bring us to June. I would suggest
11 either June 3 or June -- well, let's make this on an off day.
12 I would suggest Thursday, June 2 or Thursday, June 16.
13 Any -- any preferences, counsel?

14 MS. MORENO: I would prefer the 16th. And a
15 question, your Honor, if I may. This would be a status
16 conference date to determine a motions date in the future
17 for --

18 THE COURT: If the case is at that posture because
19 if there's a consensus that the case is still not ready to
20 set a motion date, then I'd certainly take that under
21 consideration, that particular concern under consideration.
22 But if between now and June, whatever date we do set in June,
23 counsel are pretty much at the point where they feel they've
24 reviewed all the discovery and can file motions and secure a
25 motion hearing date, I'd be happy to set a motion hearing

1 date at that time. Okay. Any other -- any other preferences
2 as to the dates I've mentioned, the 2nd or the 16th?

3 MS. HANOVER: The 16th is fine with me, your Honor.

4 THE COURT: Okay.

5 MS. FONTIER: The 16th is fine with me as well.

6 MR. GHAPPOUR: That's okay with me.

7 THE COURT: All right. The 16th --

8 MR. COLE: Yes, your Honor. That's fine.

9 THE COURT: All right. Well, let's set this then
10 for June 16, which is a Thursday, and we'll make it at nine
11 o'clock. Your pending motions are continued to that date.
12 Time is excludable under the Speedy Trial Act between today
13 and June 16 as a result.

14 And Mr. Sherif, Mr. Troiano, Mr. Geller, thank you
15 very much for all of your professionalism and courtesies
16 during the time you've been in the case. I don't imagine
17 I'll see you again on this case in the future, but once
18 again, I do thank you for the cooperation you extended to
19 each other, the government, and the Court. Appreciate it.

20 MR. GELLER: Thank you, your Honor.

21 MR. SHERIF: Thank you, your Honor.

22 MS. MORENO: Your Honor, I have an additional --

23 THE COURT: Yes, Ms. Moreno?

24 MS. MORENO: -- request if I may. Because I am
25 out-of-town counsel and I'm trying to exploit as much time as

1 I have these few remaining days while I'm here with my
2 client, is there any way that I could request that my client
3 at least be returned to prison as early as possible today so
4 I can go and work with him this afternoon? I know the
5 vagaries of the situation in terms of returning prisoners
6 back; it depends on --

7 THE COURT: And this is a very impacted district,
8 Ms. Moreno; I'm sure you are aware of that or, if not --

9 MS. MORENO: I'm a former public defender from
10 California. I have a sense of it, your Honor.

11 THE COURT: Okay. And we really do take our cue
12 from the marshals. I would -- I would appreciate -- in light
13 of your comment and your need to see Mr. Mohamud, I would
14 certainly appreciate whatever the marshals can do in terms of
15 expediting Mr. Mohamud's transport back to -- where is he
16 currently being housed?

17 DEPUTY U.S MARSHAL: He's at MCC, your Honor. I
18 can put him directly into interview so he can go directly
19 downstairs and you can just go see him.

20 THE COURT: Thank you, Pat. That's appreciated.

21 MS. MORENO: I appreciate that.

22 THE COURT: Okay. Very good. Very good. Okay.
23 Thank you. We'll see you back here in June if not before.

24 (The proceedings were concluded.)
25

Certificate of Reporter

I hereby certify that I am a duly appointed, qualified, and acting Official Court Reporter for the United States District Court; that the foregoing is a true and correct transcript of the proceedings had in the mentioned cause on the date or dates listed on the title page of the transcript; and that the format used herein complies with the rules and requirements of the United States Judicial Conference.

Dated February 25, 2014 at San Diego, California.

/s/ Debra M. Henson (electronic)
Debra M. Henson
Official Court Reporter